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SUPREME COURT, U.S.

Supreme Court of the United States

No. 15,666

M. M. MEREDITH,
Petitioner and Appellant below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL.,
Respondent and Appellee below.

PETITION FOR A WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

M. M. MEREDITH,
301 West Sixth St.,
Atlantic, Iowa,
Petitioner.

INDEX

SUBJECT INDEX

	Pages
Petition for a Writ of Certiorari	1
Summary Statement of Matter Involved	1-2
Jurisdiction	2
Questions Presented for Review	2
Complaint of Petitioner	3
Argument	4
Conclusion	8
Appendix: A	9
Appendix B	12

CASES CITED

Dickinson, vs. Colgrove, 100 U. S. 578, 580	3,5
Gilman vs. Rives, 10 Peters 298-301	3,6
Standard Oil Co. vs. Vreland, 204 Ia. 1340, 224 N. W. 467	2,5

STATUTE CITED

28 U. S. C. Sec. 1254 (1)	2

CONSTITUTION CITED

Section 1 of the Fourteenth Amendment	2,3

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

1.

On August 7, 1956, petitioner's complaint was dismissed by the United States District Court for the South-

ern District of Iowa, Western Division. Reason: Said complaint failed to state a case upon which relief could be granted (R11, R12).

Said dismissal was affirmed by the United States Court of Appeals for the Eighth Judicial Circuit. Date of decree and entry: May 7, 1957. Reasons: (a) The agreement alleged in said complaint possessed obvious congenital weaknesses. (b) Dismissal of previous complaints had settled the controversy.

On May 31, 1957, Petition for Rehearing was denied. Petitioner had thought issue of estoppel had been overlooked.

On June 11, 1957, order was issued, staying issuance of mandate, for thirty days from and after that date; and until final disposition in case Petition for Writ of Certiorari was properly filed.

Jurisdiction to review this decision of the Eighth Circuit Court of Appeals is believed to be conferred upon this Court by 28 U. S. C. Sec. 1254 (1).

2.

Questions presented for review:

(a) Said decision seems to violate one of Petitioner's Constitutional rights the one due to the last clause in Section 1 of the Fourteenth Amendment.

(b) On an important point of Iowa law, this decision seems to conflict with the decision of the Iowa Supreme Court, made in *Standard Oil Co. vs. Vedland*, 204 Ia. 1340, 224 N. W. 467.

(c) On the doctrine of estoppel, this decision seems to conflict with *Dickinson vs. Calgrove*, 100 U. S. 578, 580.

(d) Holding that dismissal of previous complaints had settled the controversy—said holding seems to conflict with *Gilman vs. Rives*, 10 Peters 298, 301.

(e) It seems that when adjudicating the validity of this complaint, the Eighth Circuit Court of Appeals failed to view it in that aspect most favorable to its validity.

3.

The last clause in Section 1 of the Fourteenth Amendment states: "[No State shall] deny to any person within its jurisdiction the equal protection of the laws."

4.

Petitioner alleged the following in said complaint:

Respondent offered to continue performing certain acts throughout a specified period of time, if petitioner, in exchange, would perform certain services. Petitioner accepted. Petitioner now has performed the specified services, which performance caused him trouble and inconvenience. The period of time specified in respondent's said offer has not yet expired. Nevertheless, respondent now is failing to perform its promised acts. Said failure is inflicting loss and injury on petitioner. Petitioner is a resident of Iowa. The exchange of offer and acceptance occurred in Iowa. Petitioner's services were performed in Iowa. Respondent promised to perform its said acts in Iowa (R1 to R5).

Subsequently to said exchange of offer and acceptance, respondent urged petitioner to proceed and act there-

after upon the assumption that respondent's future actions would accord with the terms of its said promise. Petitioner thereafter did proceed and act on that assumption. He would not thus have proceeded and acted except for respondent's aforesaid subsequent urgings (R3, R4).

There is diversity of citizenship between petitioner and respondent; and the amount involved exceeds three thousand dollars (R1).

II.

(a)

Petitioner asks the Court to take judicial notice that the following is a fact: Iowa habitually accords to the generality of persons within its jurisdiction the following protection, to wit: It enforces for them promises for which the promisors have received from the promisees, in exchange, nothing other than legal consideration.

Petitioner asks the Court to accept the following to be a self-evident fact: In his complaint, petitioner alleged he had exchanged legal consideration for respondent's promise (R3, R4).

Petitioner asks the Court to accept the following to be a fact: The Eighth Circuit Court of Appeals, when making this decision, was acting in the capacity of an Iowa Court.

Petitioner submits: If the above three propositions are true, then petitioner, by said decision, was denied by Iowa equal protection of the laws.

(b)

In this case, the Eighth Circuit Court of Appeals, in effect, held: The circumstance that the promisee has exchanged legal consideration for the promise in question—said circumstance is not a material factor in determining the legal validity of an Iowa agreement.

In *Standard Oil Co. vs. Veeland*, 204 Ia. 1340, 224 N. W. 467, the Supreme Court of Iowa, expressly, held: The circumstance that the promisee has exchanged legal consideration for the promise in question—said circumstance is the decisive factor in determining the legal validity of an Iowa agreement.

(c)

In *Dickinson vs. Oldgrove*, 100 U. S. 578, 580, the Supreme Court of the United States, in effect, held: The purpose of estoppel is to prevent, under certain conditions, the owner of a right from exercising the same. It set out those conditions as follows: "The vital principle is, he who by his language or conduct leads another to do what otherwise he would not have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

In his complaint, petitioner alleged that he now is suffering loss and injury because of the disappointment to his expectation—his expectation that respondent's present actions would accord with its said promise. Also he alleged: After the exchange of said offer and acceptance, respondent urged petitioner to act thereafter upon the assumption that respondent's future actions would accord with its said promise. Petitioner thereafter did

act upon said assumption. Which he would not have done except for those subsequent urgings (R3, R4).

Petitioner submits: According to Dickinson vs. Colgrove, supra, the Eighth Circuit Court of Appeals should have prevented respondent from exercising its right—its right to act in contrariety to its promise.

(d)

The Eighth Circuit Court of Appeals held that dismissal of previous complaints had settled the controversy.

In *Gilman vs. Rives*, 10 Peters 298, 301, the Supreme Court of the United States held: "* * * a judgment that a declaration is bad in substance * * * can never be pleaded as a bar to a good declaration for the same cause of action. The judgment is, in no just sense, a judgment on the merits."

Petitioner submits: By implication, Court thereby holds that a plaintiff is entitled to have his presumed grievance adjudicated on its merits. Expressly, the Court thereby holds that dismissal of a complaint, because same is defective, is not such adjudication.

Petitioner submits: According to said holding, any rule of procedure which would leave it to the discretionary power of the Court whether or not to grant the right of adjudication of a grievance on its merits—said procedure would be Unconstitutional. Because it would be delegation of legislative power by Congress to Courts. Deprivation of rights or granting of rights is legislative power. Judicial power is limited to defining, vindicating, and protecting rights.

Petitioner further submits: The cause of action alleged in the present complaint, is an entirely different cause of action from the one alleged in the previous complaints.

(e)

Prior to the adjudication made in this case, no Court ever had evaluated the legal significance of petitioner's alleged performance of the services which is alleged in this complaint.

The Eighth Circuit Court of Appeals based the reasons for its holding entirely upon certain information which it possessed. Said information could not be obtained from the allegations made in this complaint.

But petitioner, in his brief and in prior complaints, which had been dismissed, had made statements containing said information. The Court considered the contents of said statements to be a part of its records; and, therefore, in effect, to constitute a part of the present complaint.

Petitioner submits: Said information—the contents of said statements—was not a part of the Court's records. Because: Said statements never had been made under oath; petitioner never had been subjected to cross-examination; the accuracy of said statements never had been ascertained or certified to by any Court; and, finally, petitioner possesses a certain right with regard to said statements—a right which is inconsistent with the theory that the contents of said statements form a part of the Court's records. Petitioner has the right to modify said statements or to retract them entirely. If the contents

of said statements were a part of the Court's records, then a private individual would have the right to alter or obliterate the records of a Court.

Petitioner submits: Said information, not being a part of the Court's records; and not being ascertainable from the allegations of the complaint, was not a part of the contents of the complaint. It was extraneous information.

Petitioner submits: The employment of extraneous information, to the disadvantage of the complaint, constitutes failure to view the complaint in that aspect most favorable to its validity—a failure which is contrary to a rule of interpretation that is mandatory when the validity of a complaint is challenged.

Wherefore your petitioner prays that a Writ of Certiorari issue under Seal of this Court, directed to the Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in the case on its docket No. 15,666, M. M. Meredith vs. John Deere Plow Co. of Moline, Ill., to the end that same may be reviewed and determined by this Court as provided for by the Statutes of the United States; and that judgment herein of said Court of Appeals for the Eighth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

M. M. Meredith,
301 West Sixth St.,
Atlantic, Iowa,
Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 15,666

M. M. Meredith,

Appellant,

vs.

John Deere Plow Company of Moline, Illinois,

Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

[May 7, 1957]

M. M. Meredith, pro se, for Appellant.

Abel V. Shotwell and Raymond A. Smith (L. D. Wilson and Robert L. Barrett with them on the brief), for Appellee.

Before JOHNSEN, VOGEL and VAN OOSTERHOUT, Circuit Judges.

Per Curiam.

The District Court dismissed a suit by appellant to have an alleged contract recognized and enforced, on the ground that the complaint failed to state a claim upon which relief could be granted.

The contract provisions controlling of the litigation have twice previously been before us, in suits brought by appellant against appellee, and have been held by us to be without enforceability under Iowa law and for that reason to be incapable of supporting a claim upon which relief could be granted.

In the first suit, *Meredith v. John Deere Plow Co. of Moline, Illinois*, 8 Cir., 185 F. 2d 481, 482, we held that an action for alleged breach of the contract could not be maintained by appellant, because the effect of particular provisions of the agreement was to make the relationship between appellant and appellee terminable "by either party at will without incurring liability for damages to the other."

In the second suit, *Meredith v. John Deere Plow Co. of Moline, Illinois*, 8 Cir., 206 F. 2d 196, we affirmed the trial court's dismissal of an attempt by appellant to obtain an accounting under the contract, upon the same ground. We pointed out that our previous opinion had held the agreement to be one that was terminable at will and added, for appellant's benefit, in his pro se litigation attempt, the following: "The District Court, in dismissing the complaint in the instant action relied upon the former decision of this Court as having put an end to this controversy. The District Court was right." 206 F. 2d at page 196.

In appellant's present expedition, he seeks specific enforcement of the agreement and "any and all other or additional rights and remedies to which he may be entitled". He argues that this suit is not controlled by our previous decisions, because his two previous actions were predicated upon a dealership agreement for handling appellee's farm implements, made in 1919, while this action rests upon such an agreement made in 1924.[1]

But the statements and admissions contained in appellant's brief demonstrate that the claimed agreement of 1924 was simply an assurance or affirmation given by some sales representatives of appellee that appellee would continue to live up to the terms and conditions of the 1919 agreement. In any event, however, whether the conversations which appellant claimed had occurred in 1924 amounted to the making of a renewal agreement rather than a reiteration as to the 1919 agreement, this agree-

[1] The basis of appellant's grievance against appellee was its allowing another local dealer to handle its farm-implement line.

ment would as much be subject to the legal effect and consequence of the provisions for termination as the original agreement had been and so would equally be possessed of —in the language of our first opinion, 185 F. 2d at page 482—"obvious congenital weaknesses which rendered it unenforceable."

In an effort to put an end to appellant's repetitive suits against it on the alleged contract, appellee has moved for leave to file in this Court a petition for a writ of injunction. No injunctive relief was sought by way of counterclaim in the District Court, nor has appellee otherwise undertaken to obtain from that Court any such protection. No controlling reason is apparent why, as against the normal prerogative and function of the District Court, we should be asked to entertain such a petition in original jurisdiction.

In addition, the elements of hearing that might be involved in relation to the issuing of a writ, and the incidents of enforcement that could become necessary from any granting of it are matters which a single-judge court manifestly would be in a position to deal with, from the standpoint of both parties, more routinely, expeditiously, conveniently and economically than we.

The motion for leave to file the petition for injunction is accordingly denied.

We therefore have not engaged in any examination of the merits of appellee's petition. It may not be inappropriate to add for appellant's benefit, however, in his lay status and his pro se representation, that the position which he has taken on the present appeal, as well as in relation to appellee's motion for leave to file its injunction petition, that he has the right to file as many lawsuits against appellee on the contract as he desires, and that the dismissal by the court of one suit upon the contract cannot at all operate to bar another, is not legally tenable. Under Rule 41 (b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., any involuntary dismissal of an action, other than a dismissal for lack of jurisdiction or for improper venue, operates legally as an adjudication upon

the merits of the claim, except where the dismissal order otherwise specifies.

The order dismissing appellant's action is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

(Judgment)

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 15666 — September Term, 1956.

Tuesday, May 7, 1957.

M. M. Meredith,

Appellant;

vs.

John Deere Plow Company of Moline, Illinois,

Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa; and on Motion of the appellee, John Deere Plow Company for leave to file petition for injunction against the appellant, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the motion of appellee for leave to file petition for injunction be, and it is hereby, denied.

And it is further Ordered and Adjudged by this Court that the Order of the said District Court in this cause dismissing the action of appellant be, and the same is hereby, affirmed.

May 7, 1957